

**IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

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In re:

PIONEER HEALTH SERVICES, INC., *et al.*<sup>1</sup>,

Debtors.

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)  
) Chapter 11  
) Case No. 16-01119-NPO  
)  
) Jointly Administered  
)  
)

**MOTION TO COMPEL DEBTORS TO COMPLY WITH APPLICABLE  
LAW REGARDING PATIENT RECORDS AND OTHER  
DOCUMENTS, OR, IN THE ALTERNATIVE,  
TO COMPLY WITH 11 U.S.C. § 351**

VCC Bank, formerly known as Community Capital Bank of Virginia, as Servicing Agent for VCC 08-05, LLC (collectively, the “VCC Lender”) and Patrick County Real Estate, LLC (the “Owner” and together with the VCC Lender, the “Movants”), seek entry of an order compelling Pioneer Health Services of Patrick County, Inc. (“Pioneer of Patrick County”) and ”), Pioneer Health Services, Inc. (“Pioneer Health”) to comply with applicable Federal and State law regarding the retention and provision of access to patient records and other documents, or, in the alternative, to comply with 11 U.S.C. § 351. In support thereof, the Movants state as follows:

**Jurisdiction**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>1</sup> On April 6, 2016, the bankruptcy cases of Pioneer Health Services of Patrick County, Inc., No. 16-01120-NPO; Pioneer Health Services of Newton County, LLC, No. 16-01121-NPO; Pioneer Health Services of Stokes County, Inc., No. 16-01122-NPO; Pioneer Health Services of Choctaw County, LLC, No. 16-01123-NPO; Pioneer Health Services of Oneida, LLC, No. 16-01124-NPO; and Pioneer Health Services of Monroe County, Inc., No. 16-01125-NPO were administratively consolidated into the bankruptcy case of Pioneer Health Services, Inc., No. 16-01119-NPO. Debtor Pioneer Health Services of Early County, LLC, No. 16-01243-NPO, filed its Chapter 11 bankruptcy case on April 8, 2016. Pioneer Health Services of Early County, LLC, No. 16-01243-NPO was administratively consolidated into the “main” case of Pioneer Health Services, Inc., No. 16-01119-NPO, on April 15, 2016.

3. The bases for the relief requested herein are sections 105 and 351 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”).

### **Factual Background**

4. On March 30, 2016 (the “Petition Date”), Pioneer Health and Pioneer of Patrick County (collectively, the “Debtors”), filed petitions in the United States Bankruptcy Court for the Southern District of Mississippi (the “Court”) under chapter 11 of the Bankruptcy Code. The Debtors remain in possession of their respective existing assets and manage their properties and affairs as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On April 6, 2016, the Court entered an order [Docket No. 44] authorizing the joint administration and procedural consolidation of the chapter 11 cases pursuant to Bankruptcy Rule 1015(b).

6. Pioneer of Patrick County owned and operated a critical access hospital facility in rural southwest Virginia. The hospital was managed and run by Pioneer Health, which, on information and belief, is still responsible for actively managing and addressing the wind down of the Pioneer of Patrick County hospital which is now closed.

7. Pioneer of Patrick County, is indebted to the VCC Lender in connection with certain loans (the “Loans”). The Loans are reflected by: (i) that certain Promissory Note from Pioneer of Patrick County dated May 6, 2013 in the original principal amount of \$4,919,798.00 (“Note A”); and (ii) that certain Promissory Note from Pioneer of Patrick County dated May 6, 2013 in the original principal amount of \$1,870,202.00 (“Note B,” and together with Note A, the “VCC Lender Notes”). Copies of the VCC Lender Notes were attached as Exhibit A to the Lenders’ Motion to Compel Adequate Protection (the “Adequate Protection Motion”) [Doc No. 126] and are incorporated herein by reference.

8. The VCC Notes are subject to the terms of that certain Loan and Disbursement Agreement dated May 6, 2013, by and among Pioneer of Patrick County and VCC 08-05, LLC (the “Loan Agreement”). A copy of the Loan Agreement was attached as Exhibit B to the Adequate Protection Motion and is incorporated herein by reference.

9. The obligations due and owing in connection with the VCC Lender Notes were secured by, among other things, certain real property more commonly known as 18688 Jeb Stuart Highway, Stuart, Virginia 24171 (the “Property”) and all rent generated in connection therewith, pursuant to and as more particularly described in that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated May 6, 2013 and recorded in the Clerk’s Office for the Circuit Court of Patrick County on May 6, 2013 as Instrument Number 130000816 (the “Deed of Trust”). A copy of the Deed of Trust was attached as Exhibit C to the Adequate Protection Motion and is incorporated herein by reference.

10. During the course of these bankruptcy cases, the Debtors conducted a marketing process in an attempt to sell the assets of Pioneer of Patrick County, including the Property. Unfortunately, those efforts failed and the Debtors closed the hospital that was operating on the Property. On October 18, 2017, the United States Department of Health and Human Services’ Center for Medicare & Medicaid Services issued a letter to Pioneer of Patrick County terminating its “Critical Access” status and withdrawing Pioneer of Patrick County from the Medicare programs. As a result of these events, the Debtors agreed to grant the Lenders relief from the automatic stay and on November 27, 2017, the Court entered the *Consent Order Granting Abandonment and Granting Motion for Relief from Stay* [Doc. No. 2596].

11. Subsequent thereto, the VCC Lender initiated the foreclosure process and on December 20, 2017, a foreclosure sale was conducted with respect to the Property. VCC Lender was the high bidder at the foreclosure sale by virtue of its credit bid and assigned its rights in

connection therewith to the Owner, which is wholly owned by VCC 08-05, LLC. A Trustee's Deed conveying the Property to the Owner has been recorded in the Clerk's Office for the Circuit Court of Patrick County, Virginia.

12. Since the foreclosure sale, the Movants have contacted the Debtors on multiple occasions regarding the patient records and other documents stored at the Property (collectively, the "Records"). To date, the Debtors have not provided a meaningful response nor sought to remove and/or secure the Records. Instead, the Debtors have merely asserted it lacks sufficient funds to address the situation.

13. Multiple calls are being received each day from former patients of Pioneer of Patrick County seeking to obtain their records.

14. On information and belief, the former patients of Pioneer of Patrick County require their records in order to continue with their treatments and receive adequate medical care.

15. On information and belief, the failure of the Debtors to take control of the Records and establish a procedure and protocol to provide former patients access to such information is creating hardships among these patients that could have significant consequences to their health and wellbeing if not immediately addressed.

16. In light of the Debtors failure to comply with applicable Federal and State law or the Bankruptcy Code, the Movants are seeking to compel such compliance.

#### **Relief Requested**

17. In order to maintain the safety and wellbeing of the public, hospitals and other healthcare businesses are highly regulated by state and federal governments and there exists specific State and Federal laws and regulations that impose requirements regarding the confidentiality, retention and storage of all related medical records and documents.

18. For instance, the Health Insurance Portability and Accountability Act of 1996 (“HIPPA”), Pub. L. No. 104-191, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, Pub. L. No. 111-5, addresses issues of confidentiality, privacy and security of medical records and is generally applicable to bankruptcy debtors and trustee. 3 *Collier on Bankruptcy*, ¶ 351.01, fn. 2 (Richard Levin & Henry J. Sommer eds., 16<sup>th</sup> ed.).

19. Given that the Debtors have failed to take possession of the Records or otherwise administer patient access thereto, the Debtors are not maintaining the privacy, confidentiality and retention requirements regarding the Records and therefore, they are not in compliance with HIPPA.

20. The Debtors failure to take possession of and administer patient access to the Records is also in violation of applicable Virginia law. Pursuant to Virginia Code § 54.1-2403.3, medical records are the property of the health care provider. As the owner of the Records, Pioneer of Patrick County, and Pioneer Health as the manager and agent of Pioneer of Patrick County, is governed by Virginia Code § 32.1-127.1:01, which provides that patient records must be stored electronically or preserved in paper format by the health care facility and a health care facility must make those records available to their patients in accordance with applicable law. Va. Code § 54.1-2403.3.

21. In addition to applicable law requiring the Debtors to maintain and provide access to the Records, regulations of the Virginia State Board of Health provides that health care providers must maintain a patient record for a minimum of six years following the last patient encounter. 18 VAC § 85-20-26. Similarly, Medicare regulations generally require that providers of Medicare services, like the Debtors, keep records for at least five years from the date of settlement of the claim against Medicare for payment. *See* 42 U.S.C. § 1395(cc(a)(1)(I)(ii); 42

C.F.R. § 482.24(b)(1) (2005). As a result, applicable Federal and State law require the Debtors, including Pioneer of Patrick County, to maintain the Records for a minimum period and make them available to the patients upon request.

22. The Debtors have sought to absolve themselves of responsibility with respect to the Records on the basis of insufficient funds to comply with Federal and State law. The Bankruptcy Code, however, does not permit such actions and instead mandates an alternative course.

23. Section 351 of the Bankruptcy Code provides that for debtors involved in a “health care business” that do “not have a sufficient amount of funds to pay for the storage of patient records in the manner required under applicable Federal or State law,” an alternative storage method and disposal protocol must be complied with. 11 U.S.C. § 351.<sup>2</sup>

24. As a health care business without sufficient funds to comply with applicable Federal and State law, § 351 of the Bankruptcy Code applies to the treatment of the Records in this instance. Under § 351, a debtor is required to:

(A) promptly publish notice, in 1 or more appropriate newspapers, that if patient records are not claimed by the patient or an insurance provider (if applicable law permits the insurance provider to make that claim) by the date that is 365 days after the date of that notification, the trustee will destroy the patient records; and

(B) during the first 180 days of the 365-day period described in subparagraph (A), promptly attempt to notify directly each patient that is the subject of the patient records and appropriate insurance carrier concerning the patient records by mailing to the most recent known address of that patient, or a family member or contact person for that patient, and to the appropriate insurance carrier an appropriate notice regarding the claiming or disposing of patient records.

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<sup>2</sup> Pioneer of Patrick County acknowledges that it is a health care business as defined by 11 U.S.C. § 101(27A)) pursuant to its Voluntary Petition for Non-Individuals Filing for Bankruptcy [Case No. 16-01120; Doc. No. 1] filed in connection with its bankruptcy case.

11 U.S.C. § 351(1). If after providing this notice, the patient records are not claimed within 365 days, the health care business must:

mail, by certified mail, at the end of such 365-day period a written request to each appropriate Federal agency to request permission from that agency to deposit the patient records with that agency, except that no Federal agency is required to accept patient records under this paragraph.

11 U.S.C. § 351(2). If the contacted federal agency refuses to accept the records, then the debtor:

shall destroy those records by—

- (A) if the records are written, shredding or burning the records;
- or
- (B) if the records are magnetic, optical, or other electronic records, by otherwise destroying those records so that those records cannot be retrieved.

11 U.S.C. § 351(3).

25. To date, the Debtors have failed to comply with 11 U.S.C. § 351 and have not otherwise indicated their intent to comply. As set forth above and in section 351, the Debtors are required to secure the Records and provide notice to patients of the possession of the Records and provide an opportunity and procedure for those patients to obtain such Records. To date, as previously noted, the Debtors have failed and refused to take such actions.

26. As a result, the Debtors should be compelled to either (i) take possession of the Records and establish a protocol, in accordance with governing Federal and State law, to make the Records available to the patients for the applicable time period; or, (ii) if it lacks sufficient funds to pay for storage in accordance with Federal and State law, to take possession of the Records and establish a protocol to make the Records available to the patients in compliance with section 351.

**WHEREFORE**, the Movants request that the Court enter an order (i) compelling the Debtors to take immediate possession of the Records and establish a protocol to provide access to the Records in accordance applicable Federal and State law, or, in the alternative, to compel the Debtors to comply with 11 U.S.C. § 351, by taking possession of the Records and establishing a protocol to provide access to the Records and otherwise meeting the requirements of § 351; and (ii) granting any further relief the Court deems just and proper.

Dated: January 10, 2018  
Richmond, Virginia

Respectfully submitted,

/s/ Michael A. Condyles

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*Counsel for Movants*



**CERTIFICATE OF SERVICE**

I, Michael A. Condyles, hereby certify that on January 10, 2018, a copy of the foregoing document was served via electronic filing in the CM/ECF system for the United States Bankruptcy Court for the Southern District of Mississippi, to all parties receiving electronic notices in this bankruptcy case and mailed with the United States Postal Service, Postage prepaid and e-mailed to the following and to the parties listed on the Amended Reduced Service List as of April, 2017, which is attached hereto and made a part hereof as follows:

Pioneer Health Services, Inc.  
P.O. Box 1100  
Magee, MS 39111  
*Debtor*

Craig M. Geno, Esq.  
Law Office of Craig M. Geno, PLLC  
587 Highland Colony Parkway  
Ridgeland, MS 39157  
*Counsel to the Debtor*

Ronald H. McAlpin, Esq.  
Margaret O. Middleton, Esq.  
Christopher J. Steiskal, Sr., Esq.  
United States Trustee  
501 East Court Street  
Suite 6-430  
Jackson, MS 39201  
*Office of the U.S. Trustee*

Sean C. Kulka, Esq.  
Darryl S. Laddin, Esq.  
Arnall Golden Gregory LLP  
171 17<sup>th</sup> St., NW, Ste. 2100  
Atlanta, GA 30363  
*Counsel to the Official Unsecured  
Creditors' Committee*

James A. McCullough, II, Esq.  
Brunini, Grantham, Grower & Hewes,  
PLLC  
P.O. Drawer 119  
Jackson, MS 39205  
*Counsel to the Official Unsecured  
Creditors' Committee*

/s/ Michael A. Condyles \_\_\_\_\_

**PIONEER**

**AMENDED REDUCED SERVICE LIST**  
**As of April 2017**  
**(APPROVED BY COURT)**

**DEBTOR:**

Pioneer Health Services, Inc.  
P.O. Box 1100  
Magee, MS 39111

**SECURED CREDITORS/CERTAIN LESSORS:**

BancorpSouth  
108 E Commerce Street  
Aberdeen, MS 39730

Bank of Early  
P.O. Box 527  
Blakely, GA 39823

BMW Financial  
P.O. Box 9001065  
Louisville, KY 40290

Capital One Banking  
4445 Willard Ave., 6<sup>th</sup>  
Chevy Chase, MD 20815

Direct Credit Funding  
3629 N. 700 E, #200  
Ogden, UT 84414

Direct Credit Funding  
3629 N 700 E #200  
Ogden, UT 84414

First Financial Corporation  
Dept. #2067  
P.O. Box 87618  
Chicago, IL 60680

First Financial Leasing  
P.O. Box 87618  
Chicago, IL 60680

Funding Well Capital  
P.O. Box 790448  
Saint Louis, MO 63179

F-anding-Welt-alpitat  
2313ft-N7Heryden-Rd7,-6te-290  
Scottsciaterie-652rai-6656

**RETURNED**

GE Healthcare Financial  
P.O. Box 641419  
Pittsburgh, PA 15264-1419

**NO SUCH NUMBER; UNABLE TO FORWARD**

Hawkers  
P.O. Box 1100  
Magee, MS 39111

Leaf  
P. O. Box 64406  
Cincinnati, OH 45264-4006

Leasing Innovations  
261 North Hwy '101  
Solana Beach, CA 92075

McKesson Technologies  
P.O. Box 98347  
Chicago, IL 60693

McKesson Technologies  
400 - 5 " Avenue, #200  
Waltham, MA 02451

Med One Capital  
P.O. Box 708278  
Sandy, UT 84070

NEC  
24189 Network Place  
Chicago, IL 60673

Novitas  
2020 Technology, #100  
Mechanicsburg, PA 17050

Peoples Bank  
P.O. Box 7  
Mendenhall, MS 39114

PHS - Funding Well Cap.  
P.O. Box 790448  
Saint Louis, MO 63179

PHS - Leasing Innovations  
261 N. Hwy 101  
Solana Beach, CA 92075

PHS - Med One  
P.O. Box 708278  
Sandy, UT 84070

Premium Credit Corporation  
P.O. Box 1027  
Magee, MS 39111

Premium Credit Corporation  
1663 Simpson Hwy 49  
Magee, MS 39111

Regions Bank  
P.O. Box 2545  
Birmingham, AL 35202

Regions Equipment Finance  
202 S. 40<sup>th</sup>  
Hattiesburg, MS 39402

Siemens Financial  
170 Wood Ave. South, 8<sup>th</sup> Floor  
Iselin, NJ 08830

Stryker Flex Financial  
25652 Network Place  
Chicago, IL 60673

Trustmark  
Commercial Loan Dept.  
P.O. Box 1182  
Jackson, MS 39215

Virginia Community Capital  
110 Peppers Ferry Rd.  
Christiansburg, VA 24073

**GOVERNMENT ENTITIES/TAXING  
AUTHORITIES:**

AL Dept. of Labor  
649 Monroe St.  
Montgomery, AL 36131

AL Dept. of Revenue  
50 N. Ripley St.  
Montgomery, AL 36104

Cahaba Govt Benefits  
500 Corporate Parkway, #300  
Birmingham, AL 35242

City of Aberdeen  
Att'n: City Clerk  
125 W. Commerce St.  
Aberdeen, MS 39730

City of Blakely  
P.O. Box 350  
Blakely, GA 39823

City of Byram  
P.O. Box 720609  
Byram, MS 39272-0609

City of Magee  
123 Main Ave. North  
Magee, MS 39111-3598

City of Winston-Salem  
Revenue Division  
P.O. Box 580055  
Charlotte, NC 28258-0055

County of Choctaw  
P.O. Box 250  
Ackerman, MS 39735

Department of Health  
P.O. Box 198990  
Nashville, TN 37219-8990

Department of Community Health  
P.O. Box 277941  
Atlanta, GA 30384-7941

Early County Health Department  
618 Flowers Drive  
Blakely, GA 39823-2804

Georgia Dept. of Labor  
148 Andrew Young Intl  
Atlanta, GA 30303

GA Dept of Revenue  
P.O. Box 105544  
Atlanta, GA 30348

GA Treasury & Financial  
Dept. of Community Health  
2 Peachtree Street NW  
Atlanta, GA 30303-3172

Georgia Dept. of Community Health  
P.O. Box 277941  
Atlanta, GA 3384-7941

Hinds Co. Tax Collector  
Attn: Eddie Fair  
P.O. Box 1727  
Jackson, MS 39150

Internal Revenue Service  
Centralized Insolvency Operations  
P.O. Box 7346  
Philadelphia, PA 19101-7346

Internal Revenue Service  
c/o United States Attorney  
501 E. Court Street., Suite 4.430  
Jackson, MS 39201-5025

Madison County Tax Collector  
Attn: Kay Pace  
P.O. Box 113  
Canton, MS 39046

MS Dept. of Employment  
P.O. Box 22781  
Jackson, MS 39225-2781

MDES  
P.O. Box 1699  
Jackson, MS 39215-1699

MS Dept. of Human Services  
Child Support Enforcement  
P.O. Box 23094  
Jackson, MS 39225-3094

MS Dept. of Revenue  
c/o Sylvie D. Robinson, Esq.  
P.O. Box 22828  
Jackson, MS 39225-2828

MS State Dept. of Health Criminal History  
P.O. Box 1700  
Jackson, MS 39215-1700

MS Dept. of Revenue  
Bankruptcy Division  
P.O. Box 22808  
Jackson, MS 39225-2808

Miss. Dept. of Employment Security  
Office of Legal Affairs  
P.O. Box 1699  
Jackson, MS 39215-1699

Monroe Co. Tax Collector  
P.O. Box 578  
Aberdeen, MS 39730

NC Dept. of Commerce  
P.O. Box 26504  
Raleigh, NC 27611

NC Dept. of Labor  
1101 Mail Service Center  
Raleigh, NC 27699-1100

NC Dept. of Revenue  
501 N. Wilmington  
Raleigh, NC 27604

NC Dept. of Revenue  
P.O. Box 25000  
Raleigh, NC 27640-0150

NC Div. of Employment Security  
P.O. Box 26504  
Raleigh, NC 27611

Newton Co. Tax Assessor & Collector  
P.O. Box 7  
Decatur, MS 39327

Palmetto GBA  
P.O. Box 100277  
Columbia, SC 29202

Patrick Co. Treasurer  
P.O. Box 668  
Stuart, VA 24171

Rankin County Tax Collector  
Attn: Judy Fortenberry 211  
E. Government, #B Brandon,  
MS 39042

Scott County Chamber of Commerce  
P. O. Box 766  
Helenwood, TN 37755-0766

Scott Co. Tax Collector  
100 E. First St.  
Forest, MS 39074

Simpson County Chancery Clerk  
Tommy Joe Harvey, Chancery Clerk  
P.O. Box 367  
Mendenhall, MS 39114-0367

Simpson Co. Tax Collector  
Att'n: Charles Baldwin  
P.O. Box 459  
Mendenhall, MS 39114

Stokes Co. Tax Collector  
1014 Main Street  
Danbury, NC 27016

Stokes Co. Tax Dept.  
P.O. Box 57  
Danbury, NC 27016

Surry Co. Tax Collector  
**P.O.** Box 576  
Dobson, NC 27017-7056

Tennessee Department of Revenue  
do Attorney General's Office  
Bankruptcy Division  
P.O. Box 20207  
Nashville, TN 37202-4015

TN Dept Env. & Conservation  
WRS TN Tower, 10<sup>th</sup> Floor  
312 Rosal L. Parks Ave  
Nashville, TN 37243-1102

TN Dept. of Labor  
P.O. Box 101  
Nashville, TN 37202

Town of Oneida  
121 Municipal Drive  
Oneida, TN 37841

Town of Stuart  
P.O. Box 422  
Stuart, VA 24171

Town of Weir  
Att'n: Cyndi Brooks  
P.O. Box 217  
Weir, MS 39772

USDA  
P.O. Box 67  
Decatur, MS 39327-0067

VA Dept. of Taxation  
P.O. Box 27407  
Richmond, VA 23261

VA Employment Commission  
P.O. Box 1358  
Richmond, VA 23218

**MEMBERS OF OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS:**

McKesson Technologies, Inc.  
Peter Young, OFC #4703  
5995 Windward Parkway  
Alpharetta, GA 30005

Cardinal Health 200, LLC &  
Cardinal Health 414, LLC  
Brad Phister  
7000 Cardinal Place  
Dublin, OH 43017

Scott Medical Imaging, LLC  
Mohammed Saleh  
730 Ridgewood Road, Suite C  
Ridgeland, MS 39157

Management Plus, Inc.  
Phyllis Spence  
P.O. Box 908  
Madison, MS 39130

Erx, LLC  
Robert Devrnja, **M.D.**  
9724 Kingston Pike, Ste 1300  
Knoxville, TN 37922

**MEDICOMP 20 LARGEST UNSECURED (only those not listed previously on this reduced matrix:**

Raintree Systems, Inc.  
27307 Via Industria  
Temecula, CA 92590

Charlotte's Screen Printing, Inc.  
775 Trickhambridge Rd  
Brandon, MS 39042

The Burgess Group PA  
2506 Lakeland Dr., Ste 401  
Jackson, MS 39232

Micro Printing & Blueprint  
225 East Pearl Street  
Jackson, MS 39201

Insight Direct USA Inc  
P.O. Box 731069  
Dallas, TX 75373-1069

Dogwood Office Center  
655 Pearl Orchard Rd  
Ste 106-211  
Ridgeland, MS 39157

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**Pattf-dreatertese**  
**[peettmeseerneittireavatds7com](http://peettmeseerneittireavatds7com)**

**REMOVED - NO LONGER WORKS FOR MCGUIRE WOODS**

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